

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.602 of 2018**

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1. Sri Raju Singh @ Raju Singh @ Raju Kumar Singh Son of Sri Surendra Singh Resident of Village - Baikathpur, P.S. - Khushrupur, District - Patna.

.... Appellant/s
Versus

1. Smt. Vidyawati Devi @ Vidyawati Singh Wife of Chandra Shekhar Singh Resident of Mohalla - Vikash Nagar, Road No. 1, P.S. - Alamganj, District - Patna.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Kumar Singh
Mr. Rajnish Kumar
Mr. Raj Kumar

For the Respondent/s : Mr. Harsh Singh

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER**

3 30-04-2018 Heard both sides.

The petitioner-decree holder has filed this civil miscellaneous petition against the order dated 07.03.2018 passed in Misc. Case No.1 of 2018 by which Sub Judge VII, Patna City admitted the petition of the judgment debtor filed under Section 47 of the C.P.C.

The learned counsel for the petitioner submits that the order is non-speaking. Section 47 of C.P.C. making objection with regard to execution of the judgment and decree on the ground of its inexcutability should not be admitted in a mechanical and perfunctory manner. This court in number of judgments such as the case reported in 1998(3) PLJR 720 has held that the Executing



Court should not admit the petition under Section 47 of the C.P.C. without being *prima facie* satisfied about the judgment and decree passed on account of lack of jurisdiction or its voidness by any implication of law. It is further submitted that the Apex Court in the case of M/S Brakewel Automotive Component(India) Pvt. Ltd. v. P.R. Selvam Alagappam reported in AIR 2017 Supreme Court 1577 has held that Executing Court is not justified in entering into the evidence after admitting the petition filed under Section 47 of C.P.C. without being *prima facie* satisfied that the judgment and decree which is required to be executed passed on account of lack of jurisdiction or the same is void on account of implication of any law but the Executing Court did not pass the order giving any reason and admitted the petition which will cause irreparable loss to the decree holder.

On the other hand, in reply to the submission advanced by the learned counsel for the petitioner, learned counsel for the respondent firstly raised preliminary objection about the maintainability of this civil miscellaneous petition. It is submitted that the order is revisable under Section 115 of the C.P.C. because the matter has finally been decided by the impugned order. It is further submitted that in exercise of supervisory jurisdiction the order does not require to be interfered with even if the same sans



reasoning but I do not find the submission of the learned counsel for the respondent acceptable.

Section 47 of the C.P.C. says that “questions to be determined by the Court executing decree - All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.”

It has not remained res integra that a petition filed under Section 47 C.P.C., the Executing Court cannot travel beyond the decree nor sit in appeal over the same or pass any order jeopardizing the rights of parties thereunder. Therefore, in a petition under Section 47 of the C.P.C., the only objection about the non-executability of the decree on two grounds firstly that the court who passed the judgment and decree lacks jurisdiction and the judgment and decree is void on the ground of provisions of any law. The Executing Court cannot go beyond the decree or hear the petition under Section 47 of the C.P.C. as if the Court is sitting over the judgment in appeal. The Executing Court cannot allow the judgment debtor to adduce evidence on any other point save and except on the point of lacks of jurisdiction or on the point of voidness of judgment and decree on the ground of application of



any law but from perusal of the order impugned dated 07.03.2018, I find that the order is non-speaking and sans reasoning. The reason is the soul and heart of a judicial order and, therefore, on this ground alone, I find that the order is not sustainable. Accordingly, the order dated 07.03.2018 passed in Misc. Case No.1 of 2018 is set aside and the matter is remitted to the Executing Court to hear both sides and pass order on the petition of the judgment debtor filed under Section 47 of the C.P.C. within two weeks from the date of receipt of the same.

Accordingly, this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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